

UNITED STATES OF AMERICA
IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

In re:

MATCHBOX BUSINESS, LLC,

Case No. DG 24-01263
Chapter 11 – Sub V
Hon. Scott W. Dales
Petition Date: 05/09/2024

Debtor.

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**STIPULATION EXTENDING TIME FOR THE UNITED STATES OF AMERICA TO FILE
A COMPLAINT TO DETERMINE DISCHARGEABILITY OF A DEBT**

This Stipulation is entered into between Matchbox Business, LLC (“Debtor”), the United States of America, in part on behalf of the Small Business Administration (“SBA”), Michael V. Maggio, on behalf of the U.S. Trustee’s Office (“U.S. Trustee”), and the Subchapter V Trustee, Thomas C. Richardson (“Trustee”), collectively the “Parties.” The Parties hereby stipulate and agree as follows:

WHEREAS, on May 9, 2024, the Debtor filed a voluntary petition in this Court commencing a case for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”);

WHEREAS, Section 1141(d)(6) of the Bankruptcy Code provides that “the confirmation of a plan does not discharge a debtor that is a corporation from any debt . . . (A) of a kind specified in paragraph (2)(A) or (2)(B) of section 523(a) that is owed to a domestic governmental unit,” 11 U.S.C. § 1141(d)(6);

WHEREAS, Section 1192 of the Bankruptcy Code provides that “[i]f the plan of the debtor is confirmed under section 1191(b) of this title,” then the debtor shall not receive a discharge of any debt “of the kind specified in section 523(a) of this title,” 11 U.S.C. § 1192;

WHEREAS, Section 523(c) of the Bankruptcy Code provides that the “debtor shall be

discharged from a debt of a kind specified in paragraph (2) . . . or (6) of subsection (a) of this section, unless, on request of the creditor to whom such debt is owed . . . the court determines such debt to be excepted from discharge,” 11 U.S.C. § 523(c)(1);

WHEREAS, Rule 4007(c) of the Federal Rules of Bankruptcy Procedure provides that “a complaint to determine the dischargeability of a debt under § 523(c) shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a),” unless the Court for cause extends the time fixed by this Rule, Fed. R. Bankr. P. 4007(c);

WHEREAS, the procedural requirements of Section 523(c) of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 4007(c) have been held inapplicable to actions under section 1141(d)(6) of the Bankruptcy Code, *e.g.*, *United States ex rel. Minge v. Hawker Beechcraft Corp.* (*In re Hawker Beechcraft, Inc.*), 515 B.R. 416, 425 (S.D.N.Y. 2014) (holding deadlines imposed under Section 523(c) and Fed. R. Bankr. P. 4007 are inapplicable to a creditor seeking a dischargeability determination under 11 U.S.C. § 1141(d)(6));

WHEREAS, courts have reached differing conclusions regarding the application of Section 523 of the Bankruptcy Code to Subchapter V debtors, *e.g.*, *Avion Funding, LLC v. GFS Indus., LLC* (*In re GFS Indus., LLC*), 99 F.4th 223, 226-32 (5th Cir. 2024) (collecting cases);

WHEREAS, the current deadline for filing a complaint to assert the nondischargeability of a debt of a kind specified in § 523(a)(2) or (a)(6), if such a complaint is required, is August 12, 2024;

WHEREAS, by this Stipulation, the Parties agree to extend the deadline to file a complaint to determine dischargeability under § 523(c) with respect to all claims of any debt owed to the United States, including but not limited to debts owed to its agency, the SBA;

WHEREAS, the Parties are actively engaged in negotiations regarding the treatment of the United States’ claims and hope to resolve this matter without the need for the filing of a complaint to determine dischargeability under § 523(c);

WHEREAS, on June 20, 2024, one of the Debtor's principals, Eric Chaitin, has agreed to provide information regarding the use of the SBA loan proceeds received by the Debtor, but he has not yet provided that information, which is relevant to the Parties' negotiations;

NOW THEREFORE, the Parties stipulate and agree as follows:

1. The above recitals are fully incorporated herein and made an express part of this Stipulation.
2. The deadline by which the United States may file a complaint or take other action that may be required, if any, in this Chapter 11 case to determine the dischargeability of a debt shall be: (a) December 10, 2024; or (b) such later date as may be ordered by the Court, without prejudice to the United States' right to seek further extensions of such deadline or to argue that such deadline should not apply to the United States, and without prejudice to the Debtor's, U.S. Trustee's, and Trustee's rights, objections, or defenses related thereto or to any claims or dischargeability actions asserted by the United States.
3. Nothing in this Stipulation constitutes an admission, concession, or determination that section 523 of the Bankruptcy Code or Bankruptcy Rule 4007(c) apply to Subchapter V debtors, or that any deadline exists to seek a determination of dischargeability under the Bankruptcy Code.

Respectfully submitted,

Dated: August 7, 2024 MARK A. TOTTEN United States Attorney <u>/s/ Nicole Mazzocco</u> Nicole Mazzocco (P72354) Assistant United States Attorney P.O. Box 208 Grand Rapids, MI 49501-0208 nicole.mazzocco@usdoj.gov Attorneys for United States of America	Dated: August 7, 2024 CBH Attorneys & Counselors <u>/s/ Steven Bylenga</u> Steven Bylenga (P73492) 25 Division Ave. S, Suite 500 Grand Rapids, MI 49503 (616) 608-3061 steve@cbhattorneys.com Attorney for Debtor (With permission: 8/7/2024)
Dated: August 7, 2024 Office of the US Trustee <u>/s/ Michael V. Maggio</u> Michael V. Maggio The Ledyard Building, 2nd Floor 125 Ottawa NW, Suite 200R Grand Rapids, MI 49503 (616) 456-2002 michael.v.maggio@usdoj.gov Attorney for U.S. Trustee (With permission: 8/7/2024)	Dated: August 7, 2024 Lewis Reed & Allen PC <u>/s/ Thomas C. Richardson</u> Thomas C. Richardson (P31750) P.O. Box 51067 Kalamazoo, MI 49005-1067 (269) 349-7415 TCRTrustee@lewisreedallen.com Subchapter V Trustee (With permission: 8/7/2024)